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14 MONTANA FIRST JUDICIAL DISTRICT COURT, LEWIS AND CLARK COUNTY

15 FT. HARRISON VETERANS RESIDENCE,
16 Limited Partnership,

17 Petitioner,

18 v.

19 MONTANA BOARD OF HOUSING

20 Respondent,

21 CENTER STREET LP, SWEET GRASS
22 APARTMENTS LP, SOROPTOMIST
23 VILLAGE LP, FARMHOUSE PARTNERS-
24 HAGGERTY LP AND PARKVIEW VILLAGE
25 LLP,

26 Intervenor.

Case No. DDV 2012-356

**INTERVENORS' REPLY BRIEF IN
SUPPORT OF RESPONDENT'S MOTION
TO DISMISS, OR IN THE
ALTERNATIVE IN SUPPORT OF
RESPONDENT'S MOTION FOR
SUMMARY JUDGMENT**

27 Intervenor Center Street Limited Partnership, Sweet Grass Apartments Limited
Partnership, Soroptimist Village Limited Partnership, Farmhouse Partners-Haggerty Limited
Partnership and Parkview Village LLLP (collectively and hereinafter "Intervenors"), reply
through their counsel of record in support of the pending Motion to Dismiss filed by the Montana
Board of Housing ("the Board"), and the arguments raised in opposition by Fort Harrison
Veteran's Residence (hereinafter "FHVR").

//

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M SCHNECKLOTH
DEPUTY

1 Intervenor respectfully agree with the Board's position that this Court lacks jurisdiction
2 to provide the relief requested by FHVR in its Petition and Demand for Jury Trial because the
3 issues raised by FHVR are moot pursuant to controlling Montana Law. In reliance upon the
4 Board's 2012 tax credit allocation, Intervenor has incurred significant project related expenses
5 and costs, committed additional sums of money, and have assumed other contractual obligations
6 which preclude the practical ability of the Court to return the parties to the status quo as
7 requested by FHVR.

8 BACKGROUND

9 On May 9, 2012, Petitioner, FHVR, filed its Petition and Demand for Jury Trial seeking
10 judicial review of decisions of the Board. The issues addressed in the Petition are, generally,
11 related to the Board's allocation and award of low income housing tax credits ("LIHTCs") to
12 various entities, to the exclusion of FHVR's Freedoms Path Project. FHVR questions the
13 process, authority, legality and allocation of the LIHTCs.

14 Further, FHVR requests a stay and permanent injunction of the Board's allocation and
15 award of LIHTCs for 2012. FHVR contends the 2012 allocation creates a substantial likelihood
16 the Freedoms Path Project will become economically non-viable due to changes in the
17 calculations and value attached to future LIHTCs, as well as the potential loss of federal funding
18 for its desired project. Ironically, FHVR now asks the Court to grant relief that would effectively
19 rescind the 2012 allocations and place Intervenor in exactly the same predicament, after having
20 properly been awarded the allocations by the Board.

21 The Board received fifteen (15)¹ applications for 2012 LIHTCs totaling \$7,209,430.00.
22 Of those fifteen (15) applications, six (6) applicants were awarded all of the state's available tax
23 credits totaling \$2,522,238.00. Intervenor received a total of \$1,891,013.00 of the LIHTCs.
24 Upon receipt of the LIHTC distribution all Intervenor entered into a Reservation Agreement
25 with the Board requiring each Intervenor to submit to certain conditions of the awards. Contrary
26

27 ¹ An additional application was submitted and subsequently withdrawn by Rocky Mountain Development.

1 to the unfounded suggestion of FHVR, Intervenor wholly intend to comply with all the
2 conditions set forth in the Reservation Agreement with the Board and have demonstrated
3 ongoing compliance with the conditions of the Reservation Agreements. *Affidavit of William*
4 *Dabney*, at ¶ 5 (July 25, 2012), Attached as Exhibit A; *Affidavit of Heather McMilin* at ¶ 5 (July
5 25, 2012), Attached as Exhibit B; *Affidavit of Alex Burkhalter*, at ¶ 6 (July 26, 2012), Attached as
6 Exhibit C; *Affidavit of Nate Richmond*, at ¶ 5 (July 27, 2012), Attached as Exhibit D; and
7 *Affidavit of Donald Sterhan*, at ¶ 5 (July 26, 2012) Attached as Exhibit E.

8 Should the relief sought by FHVR be awarded, or the already awarded 2012 tax credits
9 be modified, Intervenor will suffer immediate and substantial economic harm. Succinctly
10 stated, any delay caused by Petitioner FHVR's actions in this cause resulting in any single
11 Intervenor project being completed after January 1, 2013, would wipe out the financial
12 feasibility of the project due to the change in the IRS formula for determining the value of the
13 housing tax credits. All of the money already invested in these projects by their sponsoring
14 entities, tax credit investment partners and lenders would be put at risk because of the diminution
15 of the tax value of the properties. Current and prospective purchasers of the already awarded
16 LIHTCs at issue could, even now, run scared from the specter of continued litigation, uncertainty
17 and delay caused by Petitioner in this cause. Furthermore, the deleterious ramifications suffered
18 by the affordable housing populace of Montana if any of the projects are lost cannot be over
19 emphasized. *Affidavit of Dabney*, at ¶¶ 3,9; *Affidavit of McMilin* at ¶ 2; *Affidavit of Burkhalter*,
20 at ¶ 2; *Affidavit of Richmond*, at ¶ 2; and *Affidavit of Sterhan*, at ¶ 2.

21 Intervenor CSLP was formed to develop and own a rental property financed with
22 LIHTCs in Kalispell, Montana. *Affidavit of Burkhalter*, at ¶ 2. The Board awarded CSLP
23 \$608,000.00 of annual LIHTCs on April 9, 2012. *Id.* at ¶ 4. In reliance upon the awarded
24 LIHTCs, CSLP has incurred pre-construction costs comprised of third-party costs in excess of
25 \$50,500.00 and additional developer time and travel costs have exceeded \$30,000.00. *Id.* at ¶ 5.
26 Due to various factors, including a decrease in the value of the floating LIHTC interest rate,
27 should an issuance of a hypothetical six (6) month stay or injunction prevent CSLP from placing

1 in service its Kalispell project by December 31, 2013, CSLP would incur approximately
2 \$959,345.00 in damages. *Id.* at ¶ 7. Additionally, CSLP has entered into a Purchase and Sale
3 Agreement for the property to be developed with an intended closing date of August 31, 2012.
4 *Id.* at ¶ 8. CSLP is incurring preconstruction costs of approximately \$20,000.00 per month
5 during the four month period leading up to the pending August closing. *Id.* at ¶ 8. Should CSLP
6 miss the closing date due to the uncertainty of a stay or injunction, the entire project will be put
7 in jeopardy. *Id.* at ¶ 9. If the Board's allocation of LIHTCs to CSLP's is reversed or if it is
8 awarded at a substantially lesser amount, the results will cause the entire project to become non-
9 viable and the low-income housing will not be built. *Id.* at ¶ 10.

10 Intervenor Sweet Grass Apartments Limited Partnership ("SGA") was formed to develop
11 the Sweet Grass Apartments, a twelve (12) unit complex in Shelby, Montana, to be financed with
12 LIHTCs, and was awarded \$200,000.00 of annual LIHTCs on April 9, 2012. *Affidavit of Nathan*
13 *Richmond* at ¶¶ 2-3. In reliance upon the awarded LIHTCs, SGA has incurred pre-construction
14 costs comprised of third-party costs in excess of \$24,000.00 and additional developer time and
15 travel costs have exceeded \$17,500.00. *Id.* at ¶ 4. SGA has entered into a Purchase and Sale
16 Agreement for the underlying property which is to be developed into the Sweet Grass
17 Apartments. SGA has already paid \$6,250.00 in option extension money toward the purchase
18 price. *Id.* SGA will incur a monthly cost of \$750.00 to extend the purchase option until such
19 time as it closes on its tax credit partnership. *Id.* This contract expires on November 15, 2012
20 and would require SGA to renegotiate a purchase and sale agreement or lose the project and all
21 predevelopment money expended. *Id.* Due to various factors, including a decrease in the value
22 of the floating LIHTC interest rate, should an issuance of a hypothetical six (6) month stay or
23 injunction prevent SGA from placing in service its Sweet Grass Apartments project by
24 December 31, 2013, SGA would suffer approximately \$246,832.00 in damages. *Id.* at ¶ 6. The
25 loss of this equity would render the project dead and cause irreparable harm to the project
26 partners. *Id.*

27 //

1 Additionally, the City of Shelby has committed to installing a waterline to the property
2 boundary in order to serve SGA's Shelby development. *Id.* at ¶ 7. The City's engineering firm
3 has estimated the cost of the line to be \$90,000. *Id.* Work has already commenced on the
4 installation of this line. *Id.*

5 Intervenor SVLP was formed to redevelop the Soroptimist Village Housing senior rental
6 property using LIHTC financing in Great Falls, Montana. *Affidavit of McMilin*, at ¶ 2. The
7 Board awarded SVLP \$480,000.00 of annual LIHTCs on April 9, 2012. *Id.* at ¶ 3. In reliance
8 upon the awarded LIHTCs, SVLP has incurred pre-construction costs comprised of third-party
9 costs of approximately \$75,000.00 and additional developer time and travel costs have been
10 incurred in the amount of \$15,000.00. *Id.* at ¶ 4.

11 Due to various factors, including a decrease in the value of the floating LIHTC interest
12 rate, should an issuance of a hypothetical six (6) month stay or injunction prevent SVLP from
13 placing in service its Soroptimist Village Housing project by December 31, 2013, SVLP would
14 experience approximately \$976,511.00 in damages. *Id.* at ¶ 6. A stay or injunctive relief would
15 prevent SVLP from closing on its LIHTC dependent permanent financing scheduled in August
16 2012. *Id.* at ¶ 7. Furthermore, it is necessary that SVLP continue to move forward to
17 rehabilitate the senior housing project in a timely manner with reliance upon the LIHTC
18 financing because the property is in dire need of critical system repair and maintenance,
19 including maintenance of the roof, elevator, mechanical and electrical systems. *Id.* at ¶ 8. If
20 SVLP's award of LIHTCs is reversed or if it is awarded a substantially lesser amount of
21 LIHTCs, the project will be financially non-viable and fail. *Id.* at ¶ 9.

22 Intervenor Farmhouse was formed to develop LIHTC qualifying apartment complexes in
23 Bozeman, Montana. The Board awarded Farmhouse \$200,000.00 of annual LIHTCs on April 9,
24 2012 to be utilized for financing its Haggerty Lane Apartments project. *Affidavit of Dabney*, at
25 ¶¶ 2-3. In reliance upon the awarded LIHTCs, Farmhouse has incurred pre-development costs
26 totaling approximately \$80,000.00, of which it has already paid \$44,123.00. *Id.* at ¶ 4. Ongoing
27 monthly costs of \$20,000.00 are projected through the anticipated start of construction in

1 September 2012. *Id.* at ¶ 6. Due to various factors, including a decrease in the value of the
2 floating LIHTC interest rate, should an issuance of a hypothetical six (6) month stay or
3 injunction prevent Farmhouse from placing in service its Haggerty Lane Apartments project by
4 December 31, 2013, such a stay or injunctive relief would cost Farmhouse approximately
5 \$234,892.00 in damages. *Id.* at ¶ 7. Additionally, based on the commitment of Farmhouse to
6 purchase the development site by September 2012, the bank which has an existing loan against
7 the subject property has agreed to extend additional credit to the land seller. *Id.* at ¶ 8. If a stay
8 or injunction is granted it would cause either delay or cancellation of the land sale, resulting in
9 severe financial harm to the land seller. *Id.* If Farmhouse's award of LIHTCs is reversed, or if it
10 is awarded a substantially lesser amount of LIHTCs, the project will be financially non-viable
11 and fail. *Id.* at ¶ 9. Furthermore, if Farmhouse is unable to recover its pre-development costs as
12 a result of project failure, Farmhouse's ongoing business-operations will be put in jeopardy. *Id.*

13 Intervenor Parkview was formed by Richland Affordable Housing Corporation
14 ("RAHC") to develop a twenty (20) unit, multi-family complex rental property financed with
15 LIHTCs in Sidney, Montana. *Affidavit of Sterhan* at ¶ 2. The Board awarded Parkview
16 \$403,013.00 of annual LIHTCs on April 9, 2012. *Id.* at ¶ 3. In reliance upon the awarded
17 LIHTCs, Parkview has incurred pre-construction costs comprised of third-party costs totaling
18 approximately \$94,700.00 and additional developer time and travel costs have exceeded
19 \$20,000.00. *Id.* at ¶ 4. Ongoing monthly costs of \$40,000.00 are projected through the
20 anticipated start of construction in September, 2012 at which time the LIHTC dependent
21 permanent financing is scheduled to close. *Id.* Due to various factors, including a decrease in
22 the value of the floating LIHTC tax credit percentage, should an issuance of a hypothetical six
23 (6) month stay or injunction prevent Parkview from placing in service its Sidney project by
24 December 31, 2013, such a stay or injunctive relieve would cost Parkview approximately
25 \$567,271.00. *Id.* at ¶ 6. Additionally, RAHC has received a \$300,000.00 Rural Housing and
26 Economic Development Program Grant (awarded in 2010) for the purpose of developing
27 affordable housing in Sidney, Montana. *Id.* at ¶ 8. If this grant money is not used in a timely

1 manner in relation to Parkview's Sidney project, RAHC may lose the grant. *Id.* If Parkview's
2 award of LIHTCs is reversed or if it is awarded a substantially lesser amount of LIHTCs, the
3 project will be financially non-viable and fail. *Id.* at ¶ 7.

4 As this cause proceeds, Intervenorors will incur ongoing project costs and expenses to
5 move their individual projects forward so that they may ultimately close and place their LIHTC
6 dependent projects in service in a timely manner.

7 DISCUSSION

8 Intervenorors respectfully request the *Motion to Dismiss* be changed into a *Motion for*
9 *Summary Judgment* and that the Court provide appropriate notice to the parties should it elect to
10 convert the motion. It is well settled that a court may convert a motion to dismiss for failure to
11 state a claim into a motion for summary judgment when matters outside the pleadings are
12 presented to the court. *Meagher v. Butte-Silver Bow City-County*, 2007 MT 129, ¶ 16, 337
13 Mont. 339, 160 P.3d 552. The court has the discretion to include or exclude matters presented to
14 it that are outside of the pleadings when considering a motion to dismiss. *Id.* If it chooses to
15 include matters outside of the pleadings, however, it *must* treat the motion as a motion for
16 summary judgment under Rule 56 and provide notice to the parties of its intention to do so.
17 *Gebhardt*, 203 Mont. at 390, 661 P.2d at 858. *See also Hoveland v. Petaja*, 252 Mont. 268, 271,
18 828 P.2d 392, 393–94 (1992); *State ex rel. Dept. of H. & E.S. v. City of Livingston*, 169 Mont.
19 431, 436, 548 P.2d 155, 157 (1976); *Graveley v. MacLeod*, 175 Mont. 338, 344, 573 P.2d 1166,
20 1169 (1978). The purpose of notice is to allow the parties a reasonable opportunity to present all
21 material pertinent to the motion and avoid surprise. *Plouffe*, ¶ 15. This includes an opportunity
22 to produce additional facts by affidavit or otherwise which would establish a genuine issue of
23 material fact to preclude summary judgment under Rule 56. *Plouffe*, ¶ 15 (citing *Hoveland*, 252
24 Mont. at 271, 828 P.2d at 394); *Meagher* at ¶ 16.

25 Accordingly, Intervenorors relying on the evidence presented with this *Brief* ask the Court
26 to declare this action moot.

27 //

1 **THE PETITION SHOULD BE DISMISSED IN ITS ENTIRETY BECAUSE THE ISSUES**
2 **ARE MOOT AND THE COURT LACKS SUBJECT MATTER JURISDICTION TO**
3 **DECIDE THE MATTER.**

4 The judicial power of Montana's courts, like the federal courts, is limited to "justiciable
5 controversies." See *Greater Missoula Area Fedn. v. Child Start, Inc.*, 2009 MT 362, ¶ 22, 353
6 Mont. 201, 219 P.3d 881; *Plan Helena, Inc. v. Helena Regl. Airport Auth. Bd.*, 2010 MT 26, ¶ 6,
7 355 Mont. 142, 143, 226 P.3d 567. A justiciable controversy is one upon which a court's
8 judgment will effectively operate, as distinguished from a dispute invoking a purely political,
9 administrative, philosophical or academic conclusion. *Clark v. Roosevelt County*, 2007 MT 44, ¶
10 11, 336 Mont. 118, 154 P.3d 48; accord *Seubert*, ¶ 20; *Gryczan v. State*, 283 Mont. 433, 442,
11 942 P.2d 112, 117 (1997). The central concepts of justiciability have been elaborated into more
12 specific categories or doctrines; namely, advisory opinions, feigned and collusive cases,
13 standing, ripeness, mootness, political questions, and administrative questions, each of which is
14 governed by its own set of substantive rules. *Greater Missoula*, ¶ 23. The doctrine of mootness
15 is dispositive as applied to the present case.

16 "Where the rights of third persons are involved and the parties cannot be restored to their
17 original position [an] appeal becomes moot." *Progressive Direct Ins. Co. v. Stuivenga*, 2012 MT
18 75, ¶ 37364 Mont. 390, 406, 276 P.3d 867, 878, Citing, *Gallatin Trust and Sav. Bank v. Henke*,
19 154 Mont. 170, 175, 461 P.2d 448, 451 (1969). The Court in *Stuivenga* acknowledged that this
20 statement is dicta and clarified that that the question is not merely whether the parties can be
21 restored to their original positions, but whether it is possible for the Court to grant effective
22 relief. *Id.* The Court further stated that "[i]n some situations, the only effective relief would be to
23 restore the parties to their original positions, and if that is no longer possible, then the appeal is
24 moot" *Id.* The Court goes on to explain that there are situations where relief may be granted
25 while giving the example of restitution.² *Id.*

26 //

27 ² Expressly excluding third-parties.

1 FHVR asks the Court to disregard the wholly dispositive *Hagerty* decision in which the
2 Montana Supreme Court dismissed an appeal for mootness. *State ex rel. Hagerty v. Rafn*, 130
3 Mont. 554, 304 P.2d 918 (1956). Not only is *Hagerty* similar to the case at hand, it is the
4 landmark decision in Montana regarding a determination of mootness with respect to a third
5 parties' change in position. In *Hagerty*, an action was brought to prohibit the Montana Liquor
6 Control Board ("MLCB") from issuing beer and liquor licenses to persons other than those who
7 had permits from the Blackfeet Tribe to deal in liquors on the Blackfeet Indian Reservation. *Id.*,
8 130 Mont. at 555, 304 P.2d at 918. The District Court, during summer recess of the Supreme
9 Court, entered a judgment prohibiting the MLCB from issuing liquor licenses in the Blackfoot
10 Reservation to persons who did not have permits from the Blackfoot Tribe. *Id.*, 130 Mont. at
11 555, 304 P.2d at 919. In reliance on this decision, certain tavern owners invested capital in their
12 respective enterprises and acquired patrons and customers, established ongoing business, and,
13 overall, created value. *Id.*, 130 Mont. at 558, 304 P.2d at 920. The Court found the tavern
14 owner's reliance and subsequent actions dispositive, finding the appeal moot and holding that the
15 appellate issues would be "to no purpose" and that reversal would be "without effect." In sum,
16 the Court recognized that the appeal was moot as third party interests made it impossible for the
17 court to "effect restitution" upon a reversal of the district court. *Id.*

18 FHVR states that the Board has not provided any reason the Court cannot grant effective
19 relief in this matter. In response, Intervenors invite the Court to review the attached Affidavits
20 which support the Board's position that the signing of the Reservation Agreements by
21 Intervenors have caused Intervenors to spend a substantial sum of money preparing their projects
22 for development³. Additionally, it should not be lost on the Court that these projects, currently in
23 different phases of development, are designed to protect and provide for society's most
24 vulnerable, and timeliness in completion of these projects is essential to this purpose.

25 FHVR offers the global and unsupported statement that "the Court maintains the ability
26 _____
27

³ As described in the "Background" section of this *Brief*.

1 to grant effective relief to FHVR.” Certainly the Court’s issuance of a stay of distribution of the
2 LIHTC’s would cause substantial hardship for the Intervenor and the vulnerable residents who
3 will be the recipients of the housing projects at issue. In fact, any change in the position of the
4 Board dissimilar to that provided in the Reservation Agreements would cause substantial
5 hardship to the Intervenor, and cause these projects to fail. This would certainly be the case
6 should FHVR’s remedy of “reversal” be ordered.

7 FHVR takes the position that the Intervenor, and their signing of the Reservation
8 Agreements, is dissimilar to the licenses issued in *Hagerty*, as the Intervenor have not used the
9 LIHTCs where the parties in *Hagerty* did use the licenses. This position is a falsity. As
10 indicated in the Affidavits, Intervenor have relied on the Reservation Agreements in committing
11 a substantial amount of effort and funds to these projects, just as the parties in *Hagerty* relied on
12 the issuance of the licenses to commit a substantial amount of effort and funds developing a
13 customer base and maintaining their business premises. They found land, changed their position
14 on matters, caused third-parties to change their position on matters, spent a significant amount of
15 time and energy engaging in the process, and spent large sums acquiring, maintaining and
16 holding the land and materials required for the projects. Likewise, Intervenor have placed
17 reliance on the LIHTCs to substantially change their position on the projects put at jeopardy in
18 this cause.

19 Intervenor acknowledge that the Reservation Agreements require compliance with the
20 conditions set forth therein by a general showing of project progression, and do not guarantee use
21 the LIHTCs. However, as demonstrated in the attached Affidavits, Intervenor flatly reject
22 FHVR’s unfounded suggestion of non-compliance resulting in the Board’s rescission of the
23 LIHTCs. Intervenor have complied with the obligations detailed in the Reservation Agreement.
24 Additionally, none of the conditions contained in the Reservation Agreements allow the Board to
25 unilaterally withdraw the LIHTCs from the Intervenor absent non-compliance.

26 Similarly, in *Hagerty* the businesses enjoyed continued licensure only if they continued
27 to meet the applicable laws and regulations governing such licenses. If said standards were met,

1 the Liquor Control Board could not unilaterally revoke the licenses and give them to other
2 parties. While it is true that the tax credit allocation does not occur until each project is built and
3 placed in service, Intervenor's still rely on the LIHTCs allocation from the Board in order to
4 obtain the financial commitments and third-party commitments required to build the projects.

5 **CONCLUSION**

6 FHVR's *Petition* should be dismissed. Effective relief cannot be fashioned as the Board
7 has entered into binding contracts with the Intervenor's for allocation of the 2012 tax credits. The
8 Intervenor's have relied on these binding contracts while spending substantial sums of money,
9 incurring numerous obligations and causing additional parties to change their position on
10 numerous matters. Because of this an effective remedy cannot be fashioned by the Court and
11 FHVR's *Petition* should be dismissed as moot.

12 DATED this 27 day of July, 2012.

13 BROWNING, KALECZYC, BERRY & HOVEN, P.C.

14
15 By 

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17 Browning, Kaleczyc, Berry & Hoven, P.C.
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22 Facsimile: (406) 443-6883

23
24 Attorneys for Homeward, Inc., Blue Line, Inc. and Sparrow
25 Group, Inc.
26
27

CERTIFICATE OF SERVICE

I hereby certify that on the 27th day of July 2012 a true copy of the foregoing was mailed by first-class mail, postage prepaid, addressed as follows:

Michael Green
Crowley Fleck PLLP
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Helena, MT 59624-0797

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Luxan & Murfitt, PLLP
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8 Attorneys for Homeward, Inc.,
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10 MONTANA FIRST JUDICIAL DISTRICT COURT, LEWIS AND CLARK COUNTY

11 FT. HARRISON VETERANS RESIDENCE,
12 Limited Partnership,

13 Petitioner,

14 v.

15 MONTANA BOARD OF HOUSING

16 Respondent.

Case No. DDV 2012-356

**AFFIDAVIT OF WILLIAM DABNEY OF
FARMHOUSE PARTNERS-HAGGERTY
LIMITED PARTNERSHIP**

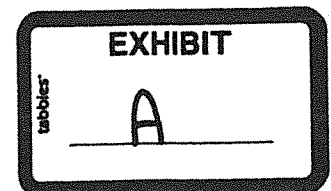
17 STATE OF MONTANA)

: ss.

18 County of Gallatin)

19 The undersigned, under oath, does hereby swear or affirm:

- 20 1. I am the owner of Farmhouse Partners Limited Partnership ("Farmhouse").
21 Farmhouse is an intervener in the above-entitled action.
- 22 2. Farmhouse is the General Partner of the entity which will own the Haggerty Lane
23 Apartments.
- 24 3. Farmhouse participated in the qualification and scoring process with the intent of
25 obtaining Low Income Housing Tax Credits ("LIHTC") for the 2012 year. On April
26 9, 2012, Farmhouse was awarded \$200,000.00 LIHTCs
- 27 4. In reliance of the awarded LIHTCs and upon the signing of the Reservation
Agreement, on or about May 10, 2012, Farmhouse has incurred pre-development
costs totaling approximately \$80,000.00, of which it has already paid \$44,123.88.



- 1 5. It is wholly our intention and desire to comply with all conditions set forth in the
2 Reservation Agreement with MBOH.
- 3 6. Ongoing monthly costs of \$20,000.00 are projected on the project through the
4 anticipated start of construction in September of 2012.
- 5 7. Due to various factors, including the decrease in the value of the floating LIHTC
6 interest rate, should an issuance of a hypothetical six (6) month stay or injunction
7 prevent Farmhouse from placing in service its Haggerty Lane Apartments project by
8 December 31, 2013, such a stay or injunctive relief could cost Farmhouse
9 approximately \$234,832.00.
- 10 8. Additionally, based on the commitment of Farmhouse to purchase the development
11 site by September 2012, the bank which has an existing loan against the subject
12 property has agreed to extend additional credit to the land seller. If a stay or
13 injunction is granted or if the LIHTC's available are reduced or eliminated, it would
14 cause either delay or cancellation of the land sale, resulting in severe financial harm
15 to the land seller.
- 16 9. If Farmhouse's award of LIHTC's is reversed or if it is a substantially lesser amount
17 of LIHTC's, the result will be catastrophic. The financial viability of the Haggerty
18 Lane Apartments project will be destroyed. The pre-development costs expended by
19 Farmhouse will be unrecoverable. The loss of these funds will severely threaten
20 Farmhouse's ongoing viability as a going concern.

21 Further Affiant Sayeth Not.

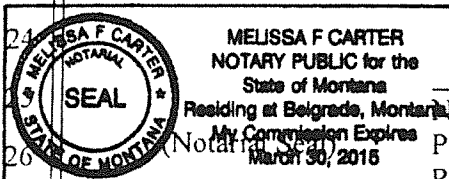
22 DATED this 25th day of July, 2012.

23 By

WILLIAM DABNEY

24 On this 25th day of July, 2012, before me, the undersigned, a Notary Public in and for the
25 State of Montana, personally appeared William Dabney, known to me to be the person whose
26 name is subscribed to the foregoing instrument and acknowledged to me that he executed the
27 same.

28 In witness whereof, I have hereunto set my hand and affixed my notarial seal on the day
29 and year first above written.



30 NOTARY PUBLIC FOR THE STATE OF MONTANA

31 Printed Name: Melissa Carter

32 Residing at: 101 Jackrabbit Ln #29 Belgrade

33 My Commission Expires 3-30-2015

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8 Attorneys for Homeword, Inc.,
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16 Respondent.

Case No. DDV 2012-356

**AFFIDAVIT OF HEATHER MCMILIN OF
SOROPTIMIST VILLAGE LIMITED
PARTNERSHIP**

17 STATE OF MONTANA)
18 : ss.
19 County of MISSOULA)

20 The undersigned, under oath, does hereby swear or affirm:

- 21 1. I am the Housing Development Director for Homeword Inc., the Developer,
22 representing Soroptimist Village, Inc. the general partner of Soroptimist Village
23 Limited Partnership ("SVLP"). SVLP is an intervener in the above-entitled action.
- 24 2. SVLP was formed by Homeword, Inc. to redevelop for the current owners,
25 Soroptimist Village, Inc., their HUD senior rental property using Low Income
26 Housing Tax Credits ("LIHTC") in Great Falls, Montana. Specifically, SVLP was
27 formed to rehabilitate current housing which is in desperate need of this tax credit
equity infusion. The original systems, while well maintained, are starting to fail,
including but not limited to the roof, elevator, mechanical and electrical systems.
Work is necessary this summer and all winter to ensure these units remain viable,
affordable senior housing in Great Falls.
3. SVLP participated in the qualification process with the intent of obtaining LIHTCs
for the 2012 year. On April 9, 2012 SVLP was awarded \$480,000.00 of LIHTC.

EXHIBIT

B

- 1 4. In reliance upon the awarded LIHTCs and upon the signing of the Reservation
2 Agreement, SVLP has incurred pre-construction costs comprised of third-party costs
3 of approximately \$95,000 and additional developer time and travel costs have been
4 incurred in the amount of \$15,000.00.
- 5 5. It is wholly our intention and desire to comply with all conditions set forth in the
6 Reservation Agreement with MBOH.
- 7 6. Due to various factors, including a decrease in the value of the floating LIHTC
8 interest rate, should an issuance of a hypothetical six (6) month stay or injunction
9 prevent SVLP from placing in service its project by December 31, 2013, such a stay
10 or injunctive relief would cost SVLP approximately \$976,511.00.
- 11 7. A stay or injunctive relief would prevent SVLP from closing on its LIHTC dependent
12 permanent financing scheduled in August of 2012.
- 13 8. It is important that SVLP continue to move forward to rehabilitate the senior housing
14 project in a timely manner with reliance upon the LIHTC financing as the property is
15 in dire need of critical system repair and maintenance. In the time since the award of
16 tax credits, the boiler, elevator and air conditioning systems have failed. Immediate
17 system replacement is critical.
- 18 9. If SVLP's award of LIHTC's is reversed or if it is awarded a substantially lesser
19 amount of LIHTC's, the results will be catastrophic. The project will no longer be
20 financially viable and will not be completed. The pre-development costs expended
21 by SVLP will be unrecoverable. The loss of these funds will severely threaten
22 SVLP's ongoing viability as a going concern.

23 Further Affiant Sayeth Not.

24 DATED this 25th day of July, 2012.

25 By

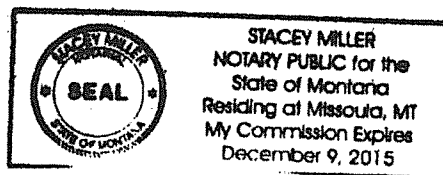
26 HEATHER MCILIN

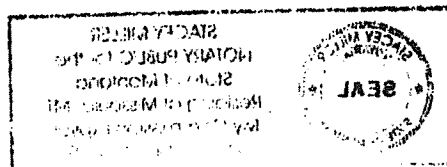
1 On this 25th day of July, 2012, before me, the undersigned, a Notary Public in and for
2 the State of Montana, personally appeared Heather McMillin, known to me to be the person
3 whose name is subscribed to the foregoing instrument and acknowledged to me that she executed
4 the same.

5 In witness whereof, I have hereunto set my hand and affixed my notarial seal on the day
6 and year first above written.

7 (Notarial Seal)

Stacey L. Miller
8 NOTARY PUBLIC FOR THE STATE OF MONTANA
9 Printed Name: STACEY MILLER
Residing at: Missoula, MT
My Commission Expires 12-9-15





1 Oliver H. Goe
2 Browning, Kaleczyc, Berry & Hoven, P.C
3 800 N. Last Chance Gulch, Suite 101
4 P.O. Box 1697
5 Helena, MT 59624-1697
6 Telephone: (406) 443-6820
7 Facsimile: (406) 443-6883

8 Attorneys for Homeward, Inc.,
9 Blue Line, Inc. and Sparrow Group, Inc.

10 MONTANA FIRST JUDICIAL DISTRICT COURT, LEWIS AND CLARK COUNTY

11 FT. HARRISON VETERANS RESIDENCE,
12 Limited Partnership,

13 Petitioner,

14 v.

15 MONTANA BOARD OF HOUSING

16 Respondent.

Case No. DDV 2012-356

**AFFIDAVIT OF ALEX BURKHALTER
OF CENTER STREET LIMITED
PARTNERSHIP**

17 STATE OF MONTANA)
18 : ss.
19 County of Missoula)

20 The undersigned, under oath, does hereby swear or affirm:

- 21 1. I am the Responsible Party of Center Street Limited Partnership ("CSLP"). CSLP is
22 an intervener in the above-entitled action.
- 23 2. CSLP was formed by Sparrow Group to develop and own a rental property. Said
24 property is to be developed with Low Income Housing Tax Credits ("LIHTC") in
25 Kalispell, Montana.
- 26 3. Sparrow Group was formed to provide planning and development services for
27 affordable housing communities in the western United States. Sparrow Group has
maintained offices in Missoula, Montana for over a decade.
4. CSLP participated in the qualification and scoring process with the intent of obtaining
LIHTCs for the 2012 year. On April 9, 2012, CSLP was awarded \$608,000.00 of
LIHTCs.

EXHIBIT

tabbies

C

- 1 5. In reliance upon the awarded LIHTCs and upon the signing of the Reservation
2 Agreement on or about May 4, 2012, CSLP has incurred pre-construction costs
3 comprised of third-party costs in excess of \$50,500.00 and additional developer time
4 and travel costs have exceeded \$30,000.00.
- 5 6. It is wholly our intention and desire to comply with all conditions set forth in the
6 Reservation Agreement with MBOH.
- 7 7. Due to various factors, including a decrease in the value of the floating Tax Credit
8 Percentage, should an issuance of a hypothetical six (6) month stay or injunction
9 prevent CSLP from placing in service its Kalispell project by December 31, 2013
10 such a stay or injunctive relief could cost CSLP approximately \$959,345.00. This
11 reduction in project sources would cause the project to no longer be financially viable
12 and will not be completed.
- 13 8. CSLP has entered into a Purchase and Sale Agreement for the property to be
14 developed with an intended closing date of August 31, 2012. CSLP incurred
15 preconstruction costs of approximately \$20,000.00 per month during the four (4)
16 month period leading up to the pending August closing.
- 17 9. Should CSLP miss the closing date due to the uncertainty of a stay or injunction, the
18 entire project will be put in jeopardy.
- 19 10. If CSLP's award of LIHTC is reversed or if it is awarded a substantially lesser
20 amount of LIHTC's, the results will be catastrophic. The project will no longer be
21 financially viable and will not be completed.

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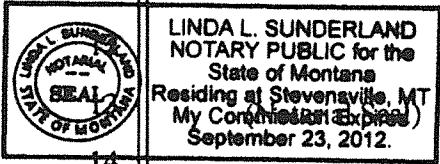
Further Affiant Sayeth Not.

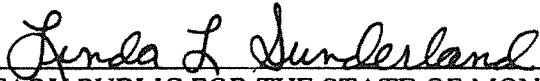
DATED this 26 day of July, 2012.

By 
ALEX BURKHALTER

On this 26 day of July, 2012, before me, the undersigned, a Notary Public in and for the State of Montana, personally appeared Alex Burkhalter, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same.

In witness whereof, I have hereunto set my hand and affixed my notarial seal on the day and year first above written.




NOTARY PUBLIC FOR THE STATE OF MONTANA
Printed Name: Linda L. Sunderland
Residing at: Stevensville MT
My Commission Expires 9/23/2012

1 Oliver H. Goe
2 Browning, Kaleczyc, Berry & Hoven, P.C.
3 800 N. Last Chance Gulch, Suite 101
4 P.O. Box 1697
5 Helena, MT 59624-1697
6 Telephone: (406) 443-6820
7 Facsimile: (406) 443-6883

8 Attorneys for Homeward, Inc.,
9 BlueLine Development, Inc. and Sparrow Group, Inc.

10 MONTANA FIRST JUDICIAL DISTRICT COURT, LEWIS AND CLARK COUNTY

11 FT. HARRISON VETERANS RESIDENCE,
12 Limited Partnership,

13 Petitioner,

14 v.

15 MONTANA BOARD OF HOUSING

16 Respondent.

17 Case No. DDV 2012-356

18 **AFFIDAVIT OF NATHAN RICHMOND**
19 **OF SWEET GRASS APARTMENTS**
20 **LIMITED PARTNERSHIP**

21 STATE OF MONTANA)
22 County of Missoula) ss.

23 The undersigned, under oath, does hereby swear or affirm:

- 24 1. I am the Responsible Party of Sweet Grass Apartments Limited Partnership ("SGA").
25 SGA is an intervener in the above-entitled action.
26 2. SGA was formed by BlueLine Development, Inc., to develop a twelve (12) unit
27 complex in Shelby, Montana, using Low Income Housing Tax Credits ("LIHTC").
3. SGA participated in the qualification and scoring process with the intent of obtaining
LIHTCs for the 2012 year. On April 9, 2012, Sweet Grass was awarded \$200,000.00
of annual LIHTCs over a 10 year credit period for a total of \$2,000,000.
4. In reliance upon the awarded LIHTCs and upon the signing of the Reservation
Agreement on or about May 11, 2012, SGA has incurred pre-construction costs
comprised of third-party costs in excess of \$24,000.00 and additional developer time
and travel costs have exceeded \$17,500.00. SGA has entered into a Purchase and
Sale Agreement for the underlying property which is to be developed into the Sweet

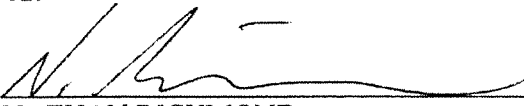
1 Grass Apartments. SGA has paid \$6,250.00 in option extension money toward the
2 purchase price. SGA will incur a monthly cost of \$750.00 to extend the purchase
3 option until such time as it closes on its tax credit partnership. The contract expires on
4 November 15, 2012 and would cause us to have to renegotiate a purchase and sale
5 agreement or lose the project and all predevelopment money expended up to that
6 point.

5. It is wholly our intention and desire to comply with all conditions set forth in the
Reservation Agreement with MBOH.
6. Due to various factors, including a decrease in the value of the floating LIHTC
interest rate, should an issuance of a hypothetical six (6) month stay or injunction
prevent SGA from placing in service its Sweet Grass Apartments project by
December 31, 2013, such a stay or injunctive relief may cost SGA approximately
\$246,832.00. The loss of this equity would render the project not feasible and cause
irreparable harm to the development and its partners.
7. The City of Shelby Montana has committed to installing a waterline to the property
boundary in order to serve our development. The City's engineering firm has
estimated the cost of the line to be \$90,000.00. Work has already commenced on the
installation of this line. If SGA's award of LIHTC's is reversed or if it is awarded a
substantially lesser amount of LIHTC's, the result will be catastrophic. The financial
viability of the Sweet Grass Apartments project will be destroyed. The pre-
development costs expended by SGA will be unrecoverable. The loss of these funds
will severely threaten SGA's ongoing viability as a going concern.

Further Affiant Sayeth Not.

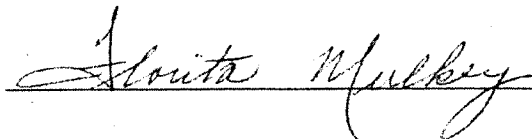
DATED this 27 day of July, 2012.

By


NATHAN RICHMOND

On this 27 day of July, 2012, before me, the undersigned, a Notary Public in and for
the State of Montana, personally appeared Nathan Richmond, known to me to be the person
whose name is subscribed to the foregoing instrument and acknowledged to me that he executed
the same.

In witness whereof, I have hereunto set my hand and affixed my notarial seal on the day
and year first above written.


Louisa Mulkey



FLORITA MULKEY
NOTARY PUBLIC for the
State of Montana
Residing at Missoula, Montana
My Commission Expires
February 21, 2014

NOTARY PUBLIC FOR THE STATE OF MONTANA

Printed Name: FLORITA MULKEY

Residing at: Missoula, Montana

My Commission Expires 2-21-2014

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1 Oliver H. Goe
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6 Telephone: (406) 443-6820
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8 Attorneys for Homeward, Inc.,
9 Blue Line, Inc. and Sparrow Group, Inc.

10 MONTANA FIRST JUDICIAL DISTRICT COURT, LEWIS AND CLARK COUNTY

11 FT. HARRISON VETERANS RESIDENCE,
12 Limited Partnership,

13 Petitioner,

14 v.

15 MONTANA BOARD OF HOUSING

16 Respondent.

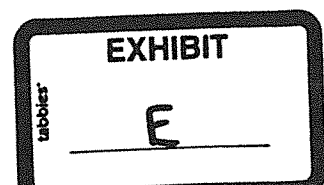
Case No. DDV 2012-356

**AFFIDAVIT OF DONALD STERHAN OF
PARKVIEW VILLAGE, LLLP**

17 STATE OF MONTANA)
18 : ss.
19 County of Yellowstone)

20 The undersigned, under oath, does hereby swear or affirm:

- 21 1. I am the Responsible Party of Parkview Village, LLLP ("Parkview"). Parkview is an
22 intervener in the above-entitled action.
- 23 2. Parkview was formed by Richland Affordable Housing Corporation ("RAHC") to
24 develop Parkview Village Apartments, a twenty-unit multi-family complex in Sidney,
25 MT, using Low Income Housing Tax Credits ("LIHTC").
- 26 3. Parkview participated in the qualification and scoring process with the intent of
27 obtaining LIHTCs for the 2012 year. On April 9, 2012, Parkview was awarded a tax
credit allocation in the amount of \$403,013.00 in annual LIHTCs; equal to a total credit
value in the amount of \$4,030,130.00.
4. In reliance upon the awarded LIHTCs and upon the signing of the Reservation
Agreement on or about May 10, 2012, Parkview had incurred pre-construction costs
comprised of third-party costs totaling approximately \$94,700.00 and additional
developer time and travel costs had exceeded \$20,000.00. Ongoing monthly costs of

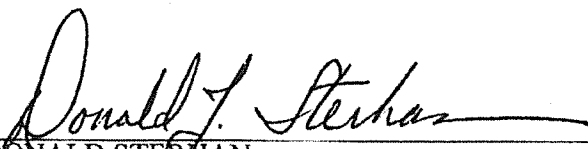


1 \$40,000.00 are projected through the anticipated start of construction in mid-September
2 2012, at which time the LIHTC dependent permanent financing is scheduled to close.
3 Should Parkview be unable to achieve the closing date in mid-September due to the
4 uncertainty of a stay or injunction, the project may no longer be viable.

- 5
- 6 5. It is wholly our intention and desire to comply with all conditions set forth in the
7 Reservation Agreement with MBOH.
- 8
- 9 6. Due to various factors, including a decrease in the value of the floating LIHTC tax
10 credit percentage, should an issuance of a hypothetical six (6) month stay or injunction
11 prevent Parkview from placing in service its Sidney project by December 31, 2013 such
12 a stay or injunctive relief could cost Parkview approximately \$567,271.00. This
13 reduction in equity capital represents a substantial loss to the overall capital structure, a
14 fact that would render the project financially incapacitated.
- 15
- 16 7. If Parkview's award of LIHTC is reversed or if it is awarded a substantially lesser
17 amount of LIHTC's, the result will be catastrophic. The financial viability of the
18 Parkview Village Apartments project will be destroyed.
- 19
- 20 8. RAHC has received a \$300,000.00 Rural Housing and Economic Development
21 Program Grant (awarded in 2010) for the purpose of developing affordable housing in
22 Sidney, Montana. If this grant money is not used in a timely manner in relation to
23 Parkview's Sidney project, RAHC may lose the grant.
- 24
- 25 9. If the LIHTC award to Parkview is reversed, or substantially less than originally
26 awarded, the project will no longer be financially viable and will not be completed.

27 Further Affiant Sayeth Not.

DATED this 26th, day of July, 2012.

By 
DONALD STERHAN

1 On this 26th day of July, 2012, before me, the undersigned, a Notary Public in and for the
2 State of Montana, personally appeared Donald Sterhan, known to me to be the person whose
3 name is subscribed to the foregoing instrument and acknowledged to me that he executed the
4 same.

5 In witness whereof, I have hereunto set my hand and affixed my notarial seal on the day
6 and year first above written.



7 TARIE R. BECK
8 NOTARY PUBLIC for the
9 State of Montana
10 Residing at Billings, Montana
11 My Commission Expires
12 October 15, 2015

Tarie R Beck

NOTARY PUBLIC FOR THE STATE OF MONTANA

Printed Name: Tarie R. Beck

Residing at: Billings, MT

My Commission Expires October 15, 2015